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SCOTT C HARRIS P O BOX 927649 SAN DIEGO, CA 92192			KYLE, CHARLES R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/780,248

Filing Date: February 09, 2001

Appellant(s): HARRIS, SCOTT C.

MAILED

JUL 28 2006

GROUP 3600

Scott C. Harris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 12, 2006 appealing from the Office action
mailed July 20, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

Claims 1-4 are withdrawn from consideration as not directed to the elected invention.

Note that Appellant makes argument at page 7 regarding the restriction. The Examiner notes that restriction matters are petitionable, not appealable.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claim 8 was cancelled and is not appealed.

Appellant's brief presents arguments relating to restriction of Claims 1-4. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

A substantially correct copy of the appealed claims appears on pages 14-20 of the Appendix to the appellant's brief. The minor errors are as follows: Claims 1-4 are petitionable and not subject to appeal.

(8) Evidence Relied Upon

6,012,045	Barzilai	01-2000
2001/0032175	Holden et al	10-2001
6,285,989	Shoham	09-2001
6,161,099	Harrington et al	12-2000
6,415,268	Dinwoodie	07-2002
5,847,971	Ladner et al	12-1998
6,101,498	Scaer et al	08-2000
6,499,018	Alaia et al	12-2002

Prince D, Auction This! Your Complete Guide to the World of Online Auctions, Prima Tech, p 136, 1999.

eBay Help : Basics : FAQ : Auction Formats, 11/22/99

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. They recite the phrase “displaying information which allows entering a user to enter either one of...”, which does not clearly recite that entering occurs; it is viewed as not limiting. Also, the phrase “entering a user to enter either one of...” is nonsensical. Applicant argues that these Claims are amended similarly to Claim 5; the indefinite word “allow” is still present.

Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It recites the phrase “displaying information allowing a seller to select an amount of time...”, which does not clearly recite that sellers actually do select; it is viewed as not limiting. Applicant argues that these Claims are amended similarly to Claim 5; the indefinite word “allowing” is still present.

The Claims have been examined to the best of the Examiner’s ability given the condition of the Claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15, 16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,012,045 *Barzilai et al.*

With respect to Claim 15, *Barzilai* discloses the invention as claimed including in a method, the steps of:

displaying an item for sale by auction over a network (Fig. 5);

and

displaying information to enter a bid for said item (Fig. 5, “Bid” button, Col. 12, lines 29-45, particularly, lines 39-41; See also Col. 12, line 29 to Col. 14, line 59).

Applicant appears to argue at Remarks that *Barzilai* does not disclose *both* the bid *and* the amount to win the auction (conjunctive). The Claim language is clearly in the *alternative* (either....or...), and so the disclosure of the displayed information to place a bid (“Bid” button) meets the requirements of the Claim. If Applicant intends that the Claim language require *both* the bid *and* the amount to win the auction, the Claim should be so amended.

Concerning Claim 16, *Barzilai* discloses automatic updating of sale items at Col. 10, line 34 to Col. 11, line 30.

With respect to Claim 19, *Barzilai* discloses the use of the Internet at Objects of the Invention.

Claims 28 is rejected under 35 U.S.C. 102(e) as being anticipated by US 2001/0032175 *Holden et al.*

With respect to Claim 28, *Holden* discloses the invention as claimed, including in a method the steps of:

conducting an auction over a network by accepting bids for items, and establishing a highest bid for an item as winning bid (Summary of the Invention); and treating a bid received within a predetermined period of time before an end time of an auction less favorably than bids received prior to said predetermined period (para. 83).

Applicant argues in Remarks that *Holden* does not disclose that bids are treated less favorably. This is incorrect. Because late arriving bids cause an auction extension, they are treated differently and less favorably than those earlier received.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,285,989 *Shoham* in view of *eBay Help : Basics : FAQ : Auction Formats*, hereinafter, *Formats*.

With respect to Claim 5, *Shoham* discloses the invention as claimed including in a method, the steps of:

Accepting bids from a plurality of users to submit bids for a specified item being auctioned (Col. 1, line 35 to Col. 2, line 3), said bids being submitted from any of a number

clients (Fig. 2; Col. 11, lines 36-56) over a network (Fig. 2, ele. 113) to a server which collects said bids (Col. 5, lines 29-35); and

defining rules for actions in said auction (Col. 5, line 65 to Col. 9, line 27), said rules including at least a time when the action will take place, and an actual action that will take place at the defined time (Col. 6, lines 40-51; Col. 10, Col. 10, lines 26-45).

Shoham does not specifically disclose rules kept secret until a defined time. *Formats* discloses the reserve price auction at page 1 "What I a Reserve Price Auction", where a reserve price is kept secret until a defined time (the time at which bids meet or exceed the reserve price). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Shoham* with a secret rule, such as that of *Formats* because this would allow a seller to not sell at an unacceptably low price.

The Examiner simply notes that reserve price is a bidding rule; the two are therefore equivalent.

Concerning Claim 6, *Shoham* discloses bids to take place at a defined time at Col. 6, lines 40-51. Applicant argues that *Shoham* fails to teach bids to take place at defined times; the start time disclosed by *Shoham* at Col. 6, lines 40-51 exactly discloses a defined time for bids

With respect to Claim 7, *Shoham* discloses overriding a bid at Col. 2, lines 29-34. Applicant argues that *Shoham* fails to teach "override" but does not distinguish his concept of "override" from increasing a bid as taught by *Shoham*.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,285,989 *Shoham* in view of US 6,161,099 *Harrington et al.*

With respect to Claim 9, *Shoham* discloses the invention substantially as claimed, including in a method of conducting an auction over a network (Col. 2, line 50 to Col. 4, line 34), the steps of:

for any particular auction, sending information from a server computer to a local computer, which information enables the local computer to carry out some function associated with bidding on an item (Col. 5, lines 29-35);

making a decision accept or reject a new bid from a user (Col. 5, lines 29-35; Col. 6, lines 10-21) and sending information about the new bid to the server computer (Figs. 4, 7; Col. 12, lines 7-21).

Shoham does not specifically disclose the newly claimed limitations of transmitting highest bidder information to a local computer and accepting at a local computer based on comparing a local bid to highest bid information. *Harrington* discloses such offloading at Summary of the Invention, particularly, Col. 5, lines 20-42. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Shoham* with the distributed processing of *Harrington* because this would avoid server overloads and resulting auction delays. It would further have been obvious to not transmit unacceptable bids to the server because this would reduce unnecessary network traffic and avoid increased processing times.

With respect to Claim 10, *Shoham* does not specifically disclose accepting a bid after comparison to a highest bid. Official Notice is taken that it was old and well known at the time of the invention to perform such a comparison in an English auction to accept only bids higher

than a current high bid. For example, it was known for an auctioneer to continually ask for increasing bids so as to maximize sellers take from a sale. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Shoham* to include such a comparison to obtain a new higher current bid because this would make an auction more profitable to a seller. As to the limitation of sending only improved bids, see the discussion of Claim 9.

With respect to Claim 11, *Shoham* discloses updating with new information at Col. 12, lines 7-21.

Claims 12-14, 23-24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,045 *Barzilai et al* in view of *Auction This!*.

With respect to Claim 12, see the discussion of Claim 15. *Barzilai* does not disclose an automatically winning bid price amount. *Auction This!* discloses this limitation at page 136, "Buy Price Auctions". It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Barzilai* to include the automatically winning bid price amount of *Auction This!* because this would allow a buyer to avoid bidding and the risk of loss by buying at such an assured price.

With respect to Claim 13, see the discussion of Claim 12 and *Auction This!* further discloses a reserve price at page 136.

With respect to Claim 14, determining whether a new bid was acceptable (higher than current bid) was old and well known at the time of the invention. *Barzilai* discloses displaying

bids at Objects of the Invention. The claim limitations of Claim 14 recite only known and fundamental aspects of auction process.

Concerning Claim 23, see the discussion of Claim 12.

With respect to Claim 24, *Barzilai* discloses a web browser. Applicant argues that the references do not teach updating and refreshing a web browser. Applicant admits that *Barzilai* has a web browser; Official Notice is taken that it was old and well known to refresh a web browser. For example, the “Reload” button in the Netscape browser and the “Reload” button in the Microsoft Internet Explorer browser performed exactly this function.

With respect to Claim 27, see the discussion of Claims 23 and 14.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,045 *Barzilai et al* in view of *Auction This!* and further in view of US 6,415,268 *Dinwoodie*.

Concerning Claims 25-26, *Barzilai* discloses the invention substantially as claimed. See the discussion of Claim 23. *Barzilai* does not disclose the use of video to form view parts or streaming video. *Dinwoodie* discloses the use of such video in an auction at Col. 6, lines 19-29. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Barzilai* to use video presentation of information because users obtain most information visually.

Claims 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,045 *Barzilai et al* in view of US 5,847,971 *Lander et al.*

Concerning Claim 17, see the discussion of Claim 15. *Barzilai* does not specifically disclose that an item for sale is presented in a three-dimensional view. *Lander* discloses this limitation at Col. 4, lines 36-47. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Barzilai* to include such a display because this would allow a bidder to obtain a more complete appreciation of the appearance of an item to be bid on (All sides could be seen, not just one).

Applicant argues in Remarks that *Lander* does not display in an auction setting. The rejection was made over the two cited references in combination. The motivation to combine references makes clear that *Barzilai* is cited for auction elements and *Lander* is cited for display of three-dimensional views of auction objects.

Claims 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,045 *Barzilai et al* in view of US 6,101,498 *Scaer et al.*

Concerning Claim 18, see the discussion of Claim 15. *Barzilai* does not specifically disclose that a screen tip is used to display information. *Scaer* discloses this limitation at Summary of the Invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Barzilai* to display bid amounts with the screen tips of *Scaer* because this would provide a simple and efficient way for a user to obtain bid data otherwise suitably hidden.

Claims 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,285,989 *Shoham* in view of US 6,101,498 *Scaer et al.*

With respect to Claim 20, see the discussion of Claim 15. *Shoham* further discloses server and clients at Figs 2-4 and related text. *Shoham* does not specifically disclose the use of screen tips. *Scaer* discloses this limitation at Summary of the Invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Shoham* to display bid amounts with the screen tips of *Scaer* because this would provide a simple and efficient way for a user to obtain bid data otherwise suitably hidden.

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,285,989 *Shoham* in view of US 6,012,045 *Barzilai et al* and further in view of US 6,101,498 *Scaer et al.*

Concerning Claim 21 (second Claim numbered 20), see the discussions set forth above. *Shoham* does not specifically disclose a current bid. Official Notice is taken that current bids were old and well known at the time of the invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Shoham* to display a current bid because this would allow bidders know what amount must be bid to become current highest bidder.

With respect to Claim 22, see the discussions of Claims 19 and 20.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2001/0032175 *Holden et al.*

With respect to Claim 29, see the discussion of Claim 28. *Holden* does not specifically disclose that the predetermined time is defined by the seller. It would have been obvious to one

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of ordinary skill in the art at the time of the invention to provide such a seller option because this would give the seller control over the anti-sniping process disclosed by *Holden*.

Claims 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2001/0032175 *Holden et al* in view of US 6,499,018 *Alaia et al*.

Concerning Claim 30, *Holden* discloses the invention substantially as claimed. See the discussion of Claim 28. *Holden* does not specifically disclose that a bidder participating in bids earlier than near the auction end is identified. *Alala* discloses this limitation at Fig. 8 and related text. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Holden* with the bidder identification of *Alala* because this would indicate that the identified bidder was making good faith bids rather than sniping. Note that *Alala* is concerned with auction closing times (see at least Abstract), as is *Holden*.

With respect to Claim 32, see the discussion of Claim 30.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 14, 5, 7, 6, 8, 5 and 9, 5, 5 and 9, 5, 13, 13 and 8, 13 and 8, 10, 11, 11 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1,2, 3, 4, 5, 6, 8, 9, 10, 13, 14, 15, 18, 19 and 20, respectively, of copending Application No. 09/669,805. Although the Claims are not identical, they are not patentably distinct from each other because they recite, *inter alia*, automatically updating remote system displays and defining rules or time profiles for bidding. This is a provisional double patenting rejection since the conflicting Claims have not yet been patented.

Applicant argues that this rejection should be withdrawn because the Claims are “entirely different” but does not explain any substantive differences. In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Applicant argues that Claim 17 links but fails to explain his reasoning.

(10) Response to Argument

Appellant begins argument on the 35 U.S.C. 112 2nd paragraph of Claim 15 at page 6 of the Appeal Brief. Because the word “entering” is not corrected, the rejection the Examiner respectfully requests that this rejection be sustained.

As to the rejection based on the phrasing “displaying information which allows... a user to enter...”, the Examiner notes that Appellant admits the ambiguity cited in the rejection, stating “It is true that the claim does not positively recite entering the information.” The basis of this rejection was that use of the word “allowing” made it unclear whether information is actually displayed or not. Allowing someone to perform an act is not the same as the performance of the act. In this case the phrasing following then word “allowing” in lines 3-4 of the Claim is not viewed as limiting; in any case the phrasing is in the alternative and *Barzilai* clearly shows information to enter a bid.

Appellant makes the same argument regarding Claim 29, for which the basis of rejection was similar.

The rejection of Claims 5-7, 15-17 and 28-32 under 35 U.S.C. 101is withdrawn based on Appellant’s comments on ex parte Lundgren.

Appellant’s argument at page 7 regarding the restriction requirement is not convincing because the action is petitionable, not appealable. No timely petition was filed.

At mid-page 7, Appellant argues against the rejection of Claims 15-16 and 19, stating that *Barzilai* does not disclose all limitations. On the contrary, the Claims recite limitations in lines 3-34 in the alternative, as is clear from the language. Had Appellant clearly phrased his apparently argued limitation, the phrasing would be phrased as, for example, “displaying information including an component of a bid for said item and an component of an amount that automatically wins the auction.”

At pages 7-8, Appellant argues that *Holden* does not treat bids received within a predetermined time period in an auction less favorably than previously received bids. The

Examiner holds that such late bids are treated differently than earlier received bids because they are subject to an auction extension, to which earlier bids are not subjected. The intention of this extension, as set out in previous office actions, is to thwart “sniping”, a practice in which a “sniping” bidder places a bid mere seconds before auction end, thus effectively precluding other bidders from placing a bid. The auction extension disclosed by *Holden* recognizes this unfair late bidding practice and treats the late bidder’s bid differently by preventing it from immediately winning the auction.

At mid-page 8, Appellant actually argues that Claims 5-7, which include a limitation from cancelled Claim 8, are not properly rejected under *Shoham* in view of *formats*. Appellant appears to argue that a secret reserve price is not a bidding rule. This is incorrect. A reserve price, disclosed by *formats*, is a price that is held secret until the predetermined time at which the highest bid exceeds the reserve price, at which time the reserve price is announced as met. It is a rule in the sense that any bid below the reserve price will not be accepted.

Appellant further argues that the Examiner has ignored words of the Claim. This is not so. The Examiner cited *Shoham* for the disclosure of “defining rules for actions in said auction (Col. 5, line 65 to Col. 9, line 27), said rules including at least a time when the action will take place, and an actual action that will take place at the defined time (Col. 6, lines 40-51; Col. 10, Col. 10, lines 26-45)” and cited *formats* for the disclosure of an auction rule (reserve price) kept secret. All limitations have been met and a proper (unchallenged) reason for combination given. Appellant seems to argue that *Shoham* does not teach all limitations of the Claims; had *Shoham* done so, the rejection would have been made under 35 U.S.C. 102.

At page 9, first paragraph, Appellant seems to argue that the Official Notice taken by the Examiner in the rejection of Claim 10 is inapplicable in the rejection of Claim 9. Indeed, the only grounds of rejection of Claim 9 were the *Shoham* and *Harrington* references. Appellant further argues that *Shoham* fails to disclose limitations for which *Harrington* was cited, specifically “transmitting highest bidder information to a local computer and accepting at a local computer based on comparing a local bid to highest bid information” at Col. 5, lines 20-42. Appellant further argues that *Harrington* fails to disclose storing on a local computer; such storage is inherent when data is received, as the data is stored in random access or video memory, at least.

Appellant further argues that *Harrington* does not disclose comparison on the local computer. This is not a claim limitation. The limitation to which Appellant refers specifically recites “wherein said accepting a bid comprises comparing a local bid to said highest bid information...”. The Claim does not specify that the comparison is performed at a local computer. Thus, the argument fails.

Additionally, it would have been obvious to “offload” the comparison to a local computer so as to lessen the server workload. Such an approach to work distribution is well known in computer science as a “fat client” entity, which handles more substantial workloads than a server. The *Microsoft Computer Dictionary, Third Edition*, 1997, defines a fat client as a client machine in a client/server architecture, that performs most or all of the processing, with little or none of the work performed by the server. Bid comparison is an ideal function for a client (local) computer to perform. Assigning such a function would reduce the workload at the server

and eliminate the sending to the server of bids which did not exceed the highest bid, and therefore were not viable.

At page 10, first full paragraph, Appellant states that *Shoham* does not disclose updating as Appellant perceives the information. However, the phrase “new information” in Claim 11, which is rejected based on the cite to *Shoham* at Col. 12, lines 7-21, does not specifically refer to the information which Appellant defines as “a bid amount which will be necessary for the computer at the local computer to be the highest bidder”. Claim 11 recites “new information” with no antecedent reference to the information of Claim 9. Further, even if the information of the two Claims could be somehow construed as linked, such updating of highest bid information would be obvious so as to keep bidders apprised of the state of the auction, i.e., they would not know how much to bid if current highest bid information were not provided by updating.

Appellant’s argument regarding Claim 23 at page 10 is based on assertion that *Barzilai* does not teach automatic updating of a display. The Examiner notes that Appellant’s claim language provides no detail as to what constitutes “automatic” refreshing of a display to distinguish over the refreshing by an automated system disclosed by *Barzilai*. Pressing a reload/refresh button on the browser interface of Netscape Navigator initiates a whole series of automatic refresh functions in the computer/display combination. Appellant’s Claim recites no particular hardware components or steps performed by software that would distinguish over the refresh of *Barzilai*.

As to Appellant’s argument at page 11 regarding Claims 25-26, the Examiner notes that *Dinwoodie* specifically discloses streaming video at Col. 6, lines 51-60, which recites:

It therefore can be seen that the present remote auction bidding system allows participants at remote locations from the auction site to participate in an interactive manner in an auction. Participants view a real-time video broadcast, via video conference, broadcast television, satellite, cable or Internet transmission and

communicate bids utilizing an input device such as, for example, a traditional telephone. The auction is capable of incorporating and receiving bids from remote participants having multi-cultures, language, and currencies.

The Examiner notes that a “pause” button was a common and well-known feature of Internet video display programs, providing stop motion video.

As to Appellant’s comments on Claim 17 at page 11, Appellant argues that *Lander* does not display in an auction setting. The rejection was made over the two cited references in combination. The motivation to combine references in the rejection makes clear that *Barzilai* is cited for auction elements and *Lander* is cited for display of three-dimensional views of auction objects. Had *Barzilai* disclosed a three-dimensional in an auction setting, the rejection would have been made under 35 U.S.C. 102. Appellant does not assert that any limitations are absent from the references relied upon, nor is the motivation to combine challenged.

Appellant’s argument regarding Claims 18 and 20-22 is similar to that of Claim 17 above and the Examiner’s response is the same. Appellant argues that *Scaer* does not disclose screen tips showing bid amounts, but it is clear from the rejection that *Barzilai* was cited for auction/bid limitations in the Claim and *Scaer* was cited for teaching screen tips combinable with the auction/bid aspects of *Barzilai*. Appellant does not assert that any limitations are absent from the references relied upon, nor is the motivation to combine challenged.

Appellant’s argument regarding claim 29 at page 12 ignores the nature of the rejection. *Holden* need not teach the predetermined time is defined by a seller because the rejection is made under 35 U.S.C. 103. The Examiner did not merely make a statement that modification of *Holden* was obvious, but rather gave a reasoned, unchallenged modification that “It would have been obvious to one of ordinary skill in the art at the time of the invention to provide such a

seller option because this would give the seller control over the anti-sniping process disclosed by *Holden*. Appellant provides no rebuttal of this comment.

Appellant next argues that *Holden* does not disclose the limitation for which the Examiner relied on *Alaia*. Figure 8 of *Alaia* clearly identifies bidders in the second column of the figure. Appellant then appears to restate arguments addressed above regarding the treating of later bids less favorably. See the Examiner's comments on Claim 28 above for response.

At last paragraph of page 12, Appellant argues against citation to *Alaia*; the Examiner notes that the rejection was made over *Holden* in view of *Alaia* and that *Holden* was the reference relied upon for the aspect of less favorable treatment for a late bidder, not *Alaia*. See the discussions above.

At page 13, Appellant argues against the double-patenting rejection. Appellant argues that this rejection should be withdrawn because the Claims are "entirely different" but does not explain any substantive differences. In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Primary Examiner

Charles Kyle



Conferees:

Supervisory Primary Examiner 

Hyung Sough

Primary Examiner

Hani Kazimi

